

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>93-10903</u>
WYCLIFFE HILLIS CAPPS)	
SS# 260-12-0059)	
1422 Hickman Road)	
Augusta, Georgia 30904)	FILED
)	at 5 O'clock & 20 min. P.M.
Debtor)	Date: 6-7-96
_____)	

ORDER

Pursuant to notice, hearing was held on the motion of Jolles & Slaby, P.C. seeking an order directing distribution of funds held in the registry of this Court resulting from the sale of property of the debtor pursuant to the debtor's confirmed plan. There is currently on deposit in the registry of the Court \$66,821.72 representing the net proceeds from the sale. There is no dispute that General Electric Capital Corp. is the holder of a first in priority security interest against this fund and entitled to a distribution from the registry of \$11,906.77 and that the balance of the proceeds should be paid to the Chapter 13 trustee for distribution in accordance with the debtor's plan. The dispute arose due to a discrepancy between the term of the debtor's

confirmed plan and the Chapter 13 trustee's scheme of distribution.

Under the Chapter 13 trustee's scheme of distribution, claims allowed under 11 U.S.C. §507(a) (1) are paid first pursuant to 11 U.S.C. §1326(b) with the debtor's attorney's fees paid in accordance with General Order No. 9 (1990) filed May 3, 1990¹ and the balance of §507 claims are paid after allowed secured claims and before general unsecured claims. In this case however the Chapter 13 plan established a different order of distribution. The confirmed Chapter 13 plan provides

1. The debtor shall pay to the trustee the sum of \$200.00 monthly.
2. From the payments so received, the trustee shall make disbursements as follows:
 - (a) the priority payments required by 11 U.S.C. §507.

¹United States Bankruptcy Court for the Southern District of Georgia General Order Number 9 (1990) then in effect at the filing of this Chapter 13 case provided

Effective in all cases filed after May 15, 1990, a claim for attorney's fees for services rendered and expenses advanced to a Chapter 13 debtor will be deemed automatically approved by the court, in the absence of an objection, so long as said claim does not exceed the sum of \$750.00. Said fee shall be paid as follows: the first \$400.00 by payment from the Trustee as soon as practicable following confirmation. The balance of \$350.00, or less if applicable, in payments from the Trustee following this initial disbursement at a rate not to exceed \$50.00 per month.

(b) Secured creditors shall retain the liens securing their claims. Creditors who file claims whose claims are allowed as secured shall be paid the amount of their claims.

(c) Subsequent to secured creditors, dividends to unsecured creditor who filed claims and whose claims are allowed shall be paid 100%.

3. Other provisions: In addition to the periodic payments specified under Paragraph 1 above, the debtor will sell his properties at 2801 Tobacco Road, Augusta, GA; 1514 and 1520 C & S Drive, Augusta, GA; 927 and 934 Moore Avenue, Augusta, GA; 3881-87 Wrightsboro Road, Augusta, GA and/or 1517 Capps Street, Augusta, GA, and pay the lienholders with the proceeds. Excess funds will be applied to the Chapter 13 plan. In the interim, until such sales are finalized, the lienholders shall receive periodic distributions from the Trustee, along with the other creditors who have allowed claims, in the order set forth under Paragraph 2 above. Debtor will liquidate said properties in sufficient number to pay off all creditors, or to reduce his overall debt to a level that can be serviced by periodic payments through the Plan alone, within 12 months of the date that his Plan is confirmed.
(emphasis added)

In this case the United States of America acting through its agency the Internal Revenue Service has an allowed priority claim pursuant to 11 U.S.C. §507(a)(8) (as presently codified) in the amount of \$23,584.78. Under the trustee's scheme of distribution this claim would be paid after allowed secured claims, but under the plan as confirmed this priority tax claim will be paid ahead of allowed secured claims. The confirmed plan is binding on all parties including the Chapter 13 Trustee.

It is therefore ORDERED that the Clerk shall disburse from the registry of the Court \$11,906.77 together with interest accrued on this portion of the registry deposit less any fees due the Clerk to General Electric Capital Corp. through its attorney of record Mr. Mark Wilhelmi, 237 David Road, Suite C, Augusta, Georgia 30907; and

further ORDERED that the balance of registry deposit less any fees due the clerk shall be paid to Mr. Barnee C. Baxter, Chapter 13 trustee, and the Trustee, in accordance with the terms of the confirmed plan, shall pay allowed priority claims pursuant to 11 U.S.C. §507 ahead of allowed secured claims.²

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 7th day of June, 1996.

²Distributions calculated pursuant to this order due the Richmond County Tax Commissioner on its allowed secured claim of \$9,163.79 will be withheld by the Chapter 13 trustee pending hearing on the debtor's request for reconsideration of that claim. According to debtor's counsel most of this claim has been paid from closing proceeds in previous property sales.